

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-----------------------------------|---|----------------------------|
| DAVID A. DOWS , | : | CIVIL ACTION |
| Plaintiff | : | |
| | : | |
| v. | : | NO. 04-341 Erie |
| | : | |
| KATHERINE E. HOLTZINGER | : | Judge McLaughlin |
| CONNER, ESQ., Chairman | : | |
| PENNSYLVANIA CIVIL SERVICE | : | |
| COMMISSION and JOHN DOE , | : | |
| Defendants | : | JURY TRIAL DEMANDED |

Part One, Deposition of J. Stephen Shartle, pages one through fifty

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -

4 DAVID A. DOWS,)
5 Plaintiff,)
6 vs.) Civil Action
7 PENNSYLVANIA CIVIL SERVICE) No. 04-341 ERIE
8 COMMISSION and JOHN DOE,)
9 Defendants.)

10 - - -

11 Deposition of J. STEPHEN SHARTLE
12 Wednesday, December 21, 2005

13 - - -

14 The deposition of J. STEPHEN SHARTLE,, called as
15 a witness by the plaintiff, pursuant to notice and the
16 Federal Rules of Civil Procedure pertaining to the
17 taking of depositions, taken before me, the
18 undersigned, Eugene C. Forcier, Stenographer
19 Commissioner in and for the Commonwealth of
20 Pennsylvania, at the Office of the Attorney General,
21 Commonwealth of Pennsylvania, Litigation Section,
22 Strawberry Square, Harrisburg, Pennsylvania 17120,
23 commencing at 9:33 o'clock a.m., the day and date
24 above set forth.

25 - - -

26
27 COMPUTER-AIDED TRANSCRIPTION BY
28 MORSE, GANTVERG & HODGE, INC.
29 ERIE, PENNSYLVANIA
30 814-454-6655

31 - - -

32

33

ORIGINAL

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 William Taggert, Esquire
4 1400 Renaissance Centre
5 1001 State Street
6 Erie, Pennsylvania 16501

7 On behalf of the Defendant:

8 Linda S. Lloyd, Senior Deputy Attorney
9 General
10 Office of the Attorney General
11 Litigation Section
12 Strawberry Square
13 Harrisburg, Pennsylvania 17120

14 Frederick C. Smith, Jr., Chief Counsel
15 State Civil Service Commission
16 Legal Services Office
17 320 Market Street, 4th Floor
18 Harrisburg, Pennsylvania 17108

19 - - -

20 ALSO PRESENT:

21 David A. Dows

22 - - -

23

24

25

26

27

28

29

30

31

1 J. STEPHEN SHARTLE
2 called as a witness by the plaintiff, having been
3 first duly sworn, as hereinafter certified, was
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. TAGGERT:

7 Q Good morning, sir.

8 A Good morning.

9 Q And just before we began today, you were
10 sworn; is that correct?

11 A That is correct.

12 Q And for the record, would you state your
13 full name?

14 A My full name is J. Stephen Shartle.

15 Q And what is your current position with the
16 Civil Service Commission?

17 A I am the director of the Bureau of
18 Technical and Information Services.

19 Q And where is your office located?

20 A It is in Strawberry Square building, in
21 Harrisburg, Pennsylvania.

22 Q Now, sir, today we are in a deposition
23 related to a lawsuit filed by my client, David Dows,
24 having to do with the civil service and the
25 maintaining of both merit lists and intern lists.

1 And, we are mostly just trying to
2 understand how this all came to be.

3 And I promise you, and you have two
4 attorneys here today, there are no tricks, and we are
5 just trying to understand how this all evolved.

6 And then how it runs in real life.

7 And, all decisions are made by Judge
8 McLaughlin, who is going to out rank of any of us.

9 Now, today, if at any time you don't
10 understand a question, don't answer it. Just tell me,
11 you know, what about the question we need to work
12 with, and I will work with you on it, until we are all
13 agreed that it is understandable, and then give your
14 best answer.

15 If you need to consult counsel today --

16 MR. TAGGERT: Would that be you,
17 Miss Linda?

18 MS. LLOYD: Yes.

19 MR. TAGGERT: Miss Lloyd. Yes, very
20 southern, Miss Linda.

21 Okay. We have been talking so much, we
22 have been e-mailing so much, we are at the Linda
23 and Bill e-mail show.

24 Q Now, would you take us through, from
25 beginning to now, your career and positions with the

1 Civil Service Commission?

2 A Sure.

3 I started with the Civil Service
4 Commission, in -- I am trying to get the year right
5 here -- I guess it was 1974, I think it was '74.

6 And I was a clerk 2, working in the mail
7 room of the state Civil Service Commission.

8 Some of these dates may be slightly off,
9 because it's been 30 years.

10 Q That's understandable. Just do the best
11 you can.

12 A Yeah.

13 I think it was in around September of 1975,
14 I was promoted to an administrative assistant job in
15 what was then the Bureau of Documents Control,
16 responsible for issuing civil service certifications.

17 Q What came next?

18 A In 1977 I was appointed as a government
19 career trainee, in the -- what was then called the
20 Technical Assistance and Investigation Division.

21 Q Now, did I take it right, that you said
22 trainee, or trainer?

23 A Trainee.

24 Q And what did that involve; what were your
25 duties in that job description?

1 A That job involved learning how to conduct
2 training sessions, learning how to investigate
3 complaints, or allegations of misdoings by applicants,
4 or eligibles, or current employees.

5 Learning about conducting technical
6 assistance reviews of personnel offices, where we
7 would look at all of their personnel functions, to see
8 if they were in compliance with civil service, and
9 writing of management directives.

10 Q And you in fact had done all of those
11 things, while you were in that position?

12 A I was learning how to do those things, when
13 I was in that position.

14 Q And what came next?

15 A At the end of the training, which was a
16 one-year training period, I was promoted to personnel
17 analyst 1.

18 Q And at that time, what were the duties of
19 personnel analyst 1?

20 A They were the same as the duties of the
21 trainee, except now I was actually doing them, I
22 wasn't learning how to do them.

23 Q And how long did you stay in the position?

24 A I was in that actual job classification for
25 about another year or two, and then I got promoted to

1 a personnel analyst 2, which was doing the same
2 duties, but more independently.

3 Q And were you confined to a geographic area,
4 or did you investigate all over the state?

5 A It was the entire Commonwealth.

6 Q What was your next job with the Commission?

7 A Sometime around 1979 or 1980, we had a
8 reorganization, and the investigative function was
9 taken out from within the division that I worked in.
10 About a year after that, an audit function
11 was added to the job. That audit function basically
12 involved reviewing personnel transactions of state
13 employees, and local government employees, to ensure
14 that those transactions complied with civil service
15 regulations, and also auditing civil service
16 certifications, to ensure that the appointments were
17 within the Rule of 3 and veterans preference.

18 Q And for the clarity of the record, later,
19 when people read this, would you describe the
20 Rule of 3?

21 A The Rule of 3 basically is that on a civil
22 service list, any one of the top three available
23 candidates can be selected.

24 What happens is, sometimes on a
25 certification, some people aren't available, so we

1 ensure they make the appointment out of the top three.

2 Q And in choosing among the top 3, is the
3 choosing individual or authority confined to any
4 particular set of standards; are they free to choose
5 completely freely, among the top three?

6 A The Rule of 3 itself, in the civil service
7 regulations, allows to appoint any one of the three.

8 Q As applied, are there restrictions; for
9 instance, the avoidance of discrimination is
10 considered illegal?

11 A Any time there is a selection, but we don't
12 necessarily audit for that.

13 Q So is it the understanding that the
14 Commission, that an authority is still limited by the
15 other -- well, by the various discrimination laws that
16 apply to hiring?

17 A Absolutely.

18 Q So that even choosing among the top three,
19 the Commission assumes that the authority hiring is
20 acting in good faith, and not using improper standards
21 to choose among the three?

22 A Right. Correct.

23 Q And again, for the record, would you
24 describe how veterans preference works, in civil
25 service hiring?

1 A Veterans preference is actually part of the
2 Commonwealth's Military Code.

3 Not really part of the Civil Service Act.

4 But how we apply it, it's three-fold.

5 One is that a veteran gets ten points added
6 to their final earned rating, or their score, if they
7 pass the test.

8 Q So the ten points can't be used to cause
9 you to pass the test?

10 A Exactly.

11 Q Okay.

12 A It's in addition to passing the test.

13 The second part of that is, if a veteran is
14 in the Rule of 3, then the veteran gets preference,
15 and a nonveteran cannot be selected.

16 Q And are there any other aspects of the
17 veterans preference?

18 A The third aspect of that is the veteran
19 does not have to be in the Rule of 3 in order to be
20 selected, the veteran can be selected regardless of
21 their final earned rating or score.

22 Q Would you explain how that works in
23 practice?

24 A When we send a list to an agency, the
25 agency has a vacancy, they will ask for a civil

1 service list, which we call a certification.

2 That certification indicates the eligibles
3 on the list who are veterans, and the agency contacts
4 the eligibles on the list, determines the Rule of 3,
5 and based on that determination, applies veterans
6 preference regulations, if there is a veteran who can
7 be appointed.

8 Q What was your next position at the
9 Commission?

10 A The next position was probably around 1980,
11 we had another reorganization, and we -- the division
12 that I worked in took over some additional functions,
13 with audits, some additional audit functions, some
14 more computerized things that we were doing, and I was
15 put in charge of a unit within the division, and I was
16 promoted to human resource analyst 3 -- I'm sorry, at
17 that time it was a personnel analyst 3.

18 Q And what were your job duties, as a
19 personnel analyst 3?

20 A Very similar to what I did previously, with
21 a couple of different functions.

22 Supervising -- some of these concepts are
23 hard to understand, you understand -- when an agency
24 processes an action, what we call a change sheet, what
25 was produced, a hard copy indicating that this is what

1 the computer updates were.

2 And I assumed responsibility for
3 supervising the staff that reviewed those, and some
4 other internal audit functions that we did.

5 Q And this activity involved both monitoring
6 state agencies, and also other governmental units?

7 A That is correct.

8 Q What was your subsequent position with the
9 Commission?

10 A Around 1985 I was promoted to the division
11 chief of Technical Assistance and Audit, which was a
12 personnel analyst 4 job.

13 Again, many of the same functions, not
14 totally all of the investigations, but I became
15 responsible for investigations in many cases,
16 involving nonselection type of complaints.

17 Q Yes.

18 A In addition to all of the other functions
19 we described previously.

20 Q How long did that remain your job?

21 A Until March of this year, I was assigned to
22 temporarily work out of class as the bureau director.

23 And, in July of this year, I was promoted
24 into the position.

25 Q So at first you were, in effect, the acting

1 bureau director?

2 A Acting bureau director.

3 Q And now it is a permanent position?

4 A Hopefully, yes.

5 Q To the extent anything in life is
6 permanent.

7 A Yes.

8 Q And in preparing for today's deposition,
9 are there any materials that you have reviewed for
10 today?

11 A I did not review anything.

12 Q Now, in your work with the Commission over
13 the years, at some point did you become familiar with
14 the concept of trainee classes?

15 A Yes.

16 Q And do you know the origins of there being
17 trainee classes, and the list being handled by the
18 Civil Service Commission?

19 A No, I do not.

20 Q In your experience, as the years went by,
21 when did you first become aware of the existence of
22 trainee classes?

23 A Probably when I first was employed with the
24 Technical Assistance Unit, which would have been like
25 back in 1975 or so.

1 Q So, would you say it's accurate that at
2 least by 1975, the Civil Service Commission had
3 dealings with some trainee class situations?

4 A Yes.

5 Q And, are these classes created by the Civil
6 Service Commission, or did they have their origin
7 somewhere else in the state government?

8 A They have their origin somewhere else.

9 Q And I am not trying to be coy, did these
10 come out of the Governor's Office?

11 A Yes, they did.

12 Q And I am going to mark as our first
13 exhibit, what is entitled "Management Directive.
14 535.5 Amended," dated September 12th, 1996.

15 And this will be our Deposition 1.

16 (Thereupon, Deposition Exhibit No. 1 was
17 marked for identification.)

18 BY MR. TAGGERT:

19 Q Please feel free to take a moment with that
20 and refresh your memory, and orient yourself as to
21 what it is?

22 A I'm familiar with this directive.

23 Q Now, the directive has six pages.

24 A Uh-huh.

25 Q And I apologize, the directive is three

1 pages, and the list of classes is six pages.

2 And, there are many different types of jobs
3 listed.

4 A Yes.

5 Q Are some of these empty categories; in
6 other words, they are not actively being used as ways
7 of putting people in jobs, either because it never
8 happened, or they are obsolete now, and they have gone
9 away?

10 A Yes.

11 Q How does -- based on all you know, how does
12 a particular class come to be developed, and then wind
13 up in the list of classes?

14 A I don't know how they are developed,
15 because that is done in a different agency.

16 Q And is that agency always the Governor's
17 Office, as we mentioned before; or can they come from
18 multiple agencies?

19 A At the time that this list was produced,
20 all of them came from the Governor's Office,
21 Administration.

22 Q Did that change later?

23 A Yes.

24 Q And where can these classes come from now?
25 In addition to the Governor's Office?

1 A The local government classes can come from
2 a committee of Commonwealth funding agencies, the
3 agencies that fund the local government agencies.

4 Q And so would it be right, that a class can
5 be agreed upon by one of these committees of funding
6 agencies?

7 A That's correct.

8 Q So -- and at that stage, the Civil Service
9 Commission might not even be aware that a class of
10 that type is being contemplated; it's being worked out
11 by this committee of agencies; is that right?

12 A We sit on the committee.

13 Q So any one of these committees would have a
14 representative from the Civil Service Commission?

15 A That's correct.

16 Q And would different people from the
17 Commission sit on different committees?

18 A No, it's just one committee.

19 Q So it is one unified committee. For
20 shorthand, does it have a name?

21 A No, it really doesn't. We just call it the
22 classification committee. I guess that's what its
23 name is, I don't really --

24 Q At least if you used that term around the
25 Civil Service Commission, people would know what you

1 were talking about?

2 A In some parts of the Civil Service
3 Commission, they would know.

4 Q And, currently, do you sit on that
5 committee?

6 A I periodically attend their sessions, but I
7 am not a regular committee member.

8 Q At any time, were you a formal member of
9 the committee?

10 A Yes. Yes.

11 Q And is there currently a designated person,
12 who is the official representative of the Commission
13 on the committee?

14 A Yes.

15 Q Who is that person?

16 A Marie Thau.

17 Q And what are the functions of the civil
18 service representative on the committee? Why don't I
19 break that into parts.

20 One, why does the Commission choose to have
21 a representative on that committee?

22 A We do that, so we can coordinate -- I
23 should add, frequently one of our test development
24 people will sit on the committee, too, not all the
25 time, but sometimes, depending on what the job is.

1 We want to ensure that whatever classes are
2 developed, that the Civil Service Commission is in
3 agreement with that class, that we are in agreement
4 with the qualifications, and that we can test for that
5 particular class.

6 Q So would it be correct that the Commission
7 has input as to the definition of the class?

8 A The classes that are being developed,
9 yes. Yes.

10 Q And the Commission works with -- the Civil
11 Service Commission works with the committee to try to
12 develop what is deemed the appropriate test for that
13 activity?

14 A No, our test development people develop the
15 test.

16 Q Is there any input from the agencies, to
17 your people, as to -- in developing the test?

18 A I don't know that for sure.

19 Q Beginning on pages 1 through 6, in the list
20 of classes --

21 A Uh-huh.

22 Q -- did you have direct professional
23 experience, in developing either the definition of the
24 class, or the test for the class, with any of these
25 classes that are listed?

1 A By "definition", what do you mean, sir?

2 Q In other words, each class -- I assume
3 under each class title, in addition to the title
4 itself, there is some sort of definition, who fits in
5 that class, or what activity the person will carry on?

6 A Okay. Yeah.

7 Q Is that correct?

8 In this list, and take your time, because
9 there are a lot of class titles, have you worked
10 personally with the development of any, either the
11 definition of the classes, or the examinations for any
12 of these classes?

13 A No, I haven't.

14 Q And do some of these classes even predate
15 you?

16 A Yes, they do.

17 Q And then over the years, the group of
18 classes has grown, and they are added as the committee
19 decides various classes are needed?

20 A I don't know that it's grown, because a lot
21 of classes have also been eliminated.

22 So I don't know if the total is greater or
23 lesser than what it was 30 years ago.

24 Q And sometimes do they merge into --

25 A Sometimes that can happen, yes, sir.

1 Q Now, what we have just been talking about,
2 does that only apply to state agencies coming to you,
3 or how do county agencies have any input about class
4 titles?

5 A I don't have direct contact with county
6 agencies, as far as job titles, other than city and
7 county housing authorities.

8 Q Do other people, in your agency, have
9 direct contact with county agencies, over the
10 development of class titles, or testing?

11 A No, we do not.

12 Q So that's really taken care of at the state
13 level, by the committee that you were talking about
14 earlier?

15 A It's taken by the state agency that funds
16 that county program.

17 Q Do you know which state agency is
18 responsible for the funding that flows to county
19 Offices of Children and Youth?

20 A Yes, that would be the Department of Public
21 Welfare.

22 Q And so does a DPW representative sit on the
23 committee that we have been talking about?

24 A Yes, they do.

25 Q Now, on page 5 of the six page list, there

1 is a designation class code L0618?

2 A Yes.

3 Q County social casework intern.

4 Would that class have been developed by the
5 committee, decided upon by the committee?

6 A Not to my knowledge.

7 Q Do you know how this particular class came
8 to exist?

9 A To my knowledge, it was something that the
10 Governor's Office of Administration coordinated with
11 whichever funding agency requested this class.

12 Q Do you know, would that funding agency have
13 been DPW?

14 A It could have been DPW, it could have been
15 a Department of Aging, since both of them use it.

16 Q Now, no matter who created the class, would
17 the Commission have created whatever testing
18 instrument was prepared to rank people in the class?

19 A As -- you mean as a result of the testing?

20 Q Yes.

21 A Yes.

22 Q And we are talking now about county social
23 casework intern?

24 A Yes, we would have developed the
25 examination program.

1 Q Did you have any involvement with the
2 development of the test instrument that's used for
3 that particular class?

4 A I did not.

5 Q Do you know who did?

6 A I do not.

7 Q Which department in the Commission would
8 have been responsible for creating --

9 A It would have been our Bureau of Personnel
10 Assessment.

11 Q Now, do you have some familiarity with the
12 requirements applied through the Commission, for
13 county social casework intern?

14 A I have some limited knowledge of it, yes.

15 Q Okay. So, you know, if we bump up, or go
16 over those edges, tell us.

17 A Yes, sir.

18 Q My highly limited understanding is that
19 there is, oh, a questionnaire that the interns are
20 asked to fill out in order to be on that list; is that
21 a fair statement?

22 A I don't know that for certain.

23 Q If you know, is there an actual graded test
24 that people take, for county social casework intern?

25 A I don't know.

1 Q Now, are you also familiar with a category
2 of county caseworker?

3 A Yes.

4 Q And do you have any knowledge of the
5 creation of that class title?

6 A I'm not sure I understand the question,
7 exactly.

8 But I know that that class title exists.

9 Q Have you ever had -- prior to any dealings
10 with Mr. Dows, did you ever have occasion to work with
11 any cases, complaints, developments, exams, anything
12 having to do with county caseworker 2 positions?

13 A Ever.

14 Q It's a big word, yes.

15 That you recall, obviously. As you said,
16 you have been with the commission many years.

17 A In probably around 1977, myself, and a
18 representative from our test development unit, and the
19 Governor's Office, and the Department of Public
20 Welfare, and -- I'm not even sure if the Department of
21 Aging existed then, I don't think it did -- the
22 agencies that had local government employees, met to
23 designate these class code things, that you see, the
24 L0618, the L0624.

25 Q And so forth, down through that?

1 A And so forth, to establish basically a
2 local government classification plan.

3 So, we did do that.

4 I was involved at that point.

5 Sometime subsequent to that, probably, oh,
6 mid '80's, '84 or so, you know, I could really be off
7 on that date, I was on a committee that broke out the
8 caseworker class, the county caseworker class, into
9 the aging care manager and a drug and alcohol class
10 called drug and alcohol case management specialist.

11 So up until that point, caseworkers for all
12 three agencies were called caseworkers.

13 We broke those out into three different
14 categories.

15 Q One would be the drug and alcohol
16 counselors?

17 A It is called the drug and alcohol case
18 management specialist.

19 Q And then there would be one for the aging?

20 A Which is the aging care manager, which is
21 one of the classes listed there.

22 Q And then there would be --

23 A The county caseworker.

24 Q -- the county caseworkers.

25 Now, would it be correct that the casework

1 intern can move into the position of being a county
2 caseworker; that that tracks into becoming a county
3 caseworker, if one successfully serves the internship,
4 and the county chooses to keep the person?

5 A Yes, it can.

6 Q With the caseworker positions, both intern
7 and county caseworker, are you aware of any analysis
8 done of the population of people who become interns,
9 and then caseworkers, as to their age or gender?

10 A I am not privy to any such information.

11 Q So you are not aware, within the
12 Commission, of there being a gender or age analysis of
13 the people moving into the internship position, or
14 into the county caseworker position; is that right?

15 A I am not aware of any such documents,
16 information.

17 Q Okay.

18 MR. TAGGERT: Off the record.

19 (Discussion off the record.)

20 (Thereupon, Deposition Exhibit No. 2 was
21 marked for identification.)

22 BY MR. TAGGERT:

23 Q Sir, if you would take a moment with No. 2.
24 Would you tell us what that is?

25 A This is a notice of exam results.

1 Q And is it for Mr. Dows; does it relate to
2 Mr. Dows?

3 A The name on the notice is D.A. Dows.

4 Q And this references a particular position.
5 What position is that?

6 A These are examination results for the drug
7 and alcohol case management specialist trainee, drug
8 and alcohol case management specialist, and drug and
9 alcohol case management supervisor.

10 Q And would it be correct, that based on the
11 notations on the right-hand side, Mr. Dows placed at
12 the top of that particular examination? And I am
13 referring to the column that says "Higher Than You,"
14 and the filled in is zero.

15 A I'm not sure I understand the question,
16 now.

17 Q Okay. Would it be correct, that relative
18 to the exam in question, the test results showed that
19 Mr. Dows was the highest ranking individual?

20 A That is true, except for the drug and
21 alcohol case management supervisor.

22 Q And under that category, we see, is that
23 Z as in zebra 03?

24 A That is correct.

25 Q And then under "Comment," it says, "You do

1 not have the required experience."

2 Does the Commission, before someone sits
3 for the exam, decide whether an individual has the
4 experience to sit for the exam, or look at it
5 afterwards, once the test results are in?

6 A Either one could happen.

7 Q And in the opinion -- if in the opinion of
8 the Commission, an individual does not have the
9 necessary experience, does the Commission ask someone
10 to not sit for the exam?

11 A If that evaluation is done ahead of time,
12 yes.

13 Q But there is no significance, as far as you
14 know, to detecting it before or after taking the exam?

15 In other words, that's just the luck of the
16 draw, sometimes it happens one way, sometimes it
17 happens the other?

18 A No.

19 It's --

20 Q Or it only becomes relevant if the person
21 does well on the exam, and then somebody looks at the
22 underlying experience?

23 A It's not done by happenstance, so to speak.
24 It is done because a person may request to have their
25 application evaluated before they take the test.

1 Q Oh, I see.

2 A But it's not a random thing.

3 Q And then if one doesn't make that request,
4 but scores well on the exam, then a Civil Service
5 Commission employee would look to determine if the
6 individual had the required experience?

7 A That is correct.

8 Q Are the actual examinations are graded by
9 Civil Service Commission's employees?

10 A Yes.

11 Q So it's always in-house?

12 A That is correct.

13 Q And the counties themselves don't have any
14 input on the grading of examinations; is that right?

15 A I don't know that for a fact.

16 Q In your experience, have you known the
17 counties to have any part in the grading of the civil
18 service exams?

19 A The question is rather broad, and difficult
20 to answer.

21 Q Right. How may I --

22 A Because --

23 Q How may I help you, how may I narrow it?

24 A Well, with exams, our test development
25 people do deal sometimes with the agencies, not to

1 actually score the examination paper, but to determine
2 what good questions there are, what is the most
3 appropriate answer, and that sort of thing.

4 I don't know if they have done that with
5 local government agencies or not.

6 Q So, would it be fair to say, that perhaps
7 counties play some part in the development of some
8 examination questions?

9 A Yes.

10 Q But, the counties play no part in the
11 actual grading of exams?

12 A Correct.

13 (Thereupon, Deposition Exhibit No. 3 was
14 marked for identification.)

15 BY MR. TAGGERT:

16 Q Sir, I ask you if you would take a look at
17 Deposition Exhibit 3.

18 And would you tell us what Exhibit 3 is;
19 would you identify that for us?

20 A Notice of examination results.

21 Q And that's again for Mr. Dows; is that
22 correct?

23 A That is correct.

24 Q And for which job titles?

25 A County case worker 1 (local government),

1 county caseworker 2 (local government) and county
2 caseworker 3 (local government).

3 Q And as you understand it, from looking at
4 Exhibit 3, where did Mr. Dows rank in that testing?

5 A For the county caseworker 1, he ranked
6 No. 1.

7 For the county caseworker No. 2, and the
8 county caseworker 3, he was not eligible.

9 Q And does the document say why Mr. Dows was
10 not considered eligible?

11 A It says, "You do not have the required
12 experience."

13 Q And so that is similar to that notation in
14 Exhibit 2; correct?

15 A Correct.

16 Q Do you know, from any of your dealings with
17 Mr. Dows, or investigating a case about him, as was
18 discussed earlier this morning, what was meant by
19 missing requirements; do you know what requirement or
20 requirements he didn't meet?

21 A I do not know.

22 Q Would it refresh your memory, that the
23 absent requirements might have been a time of -- an
24 amount of time he had worked in a related activity,
25 social work kind of activity?

1 A That, no, I -- I don't recall.

2 Q Now, as to caseworker interns, do you know
3 when an individual is a caseworker intern, is he or
4 she being paid out of the local county's budget, or is
5 there money being received from the state to pay for
6 the interns, the caseworker interns?

7 A I don't know.

8 Q Now, is that something -- for Office of
9 Children and Youth interns, is that something that
10 would be known to someone within the Department of
11 Public Welfare?

12 A I don't know.

13 Q Is it your understanding that some state
14 funds flow -- based on an earlier question today, some
15 state funds flow from DPW to county Offices of
16 Children and Youth?

17 A My understanding is that there are funds
18 that flow from DPW to local government. Whether they
19 are federal funds, or state funds, I am not aware.

20 Q All right.

21 But, though we don't know whether they are
22 state or federal in their source, they, these funds,
23 some funds move through the Department of Public
24 Welfare to these county OCY organizations; correct?

25 A Correct.

1 Q Now, what is the process for an individual
2 to become a county social -- or attempt to become a
3 county social casework intern? What does an
4 individual do?

5 A The only part of the program that I am
6 familiar with, is the fact that they have to take a
7 civil service exam, whatever that exam is, and be in
8 the Rule of 3.

9 Q Within the Commission, which persons would
10 you think would be knowledgeable on that trainee
11 subject, what people have to do to become a county
12 social caseworker intern?

13 A I would think that somebody in our Bureau
14 of Employment Services, but I don't know which
15 individual is the coordinator, or the expert on that
16 particular class.

17 Q Would Mr. DelToro be someone who would be
18 familiar with those issues?

19 A Possible.

20 Q And the same thing as to Marie Thau?

21 A Marie, I can't speak for her, but she works
22 with me, and we don't get involved in those kind of
23 things.

24 I would assume not, but I don't know.

25 Q At the Commission, did you know a

1 Mr. Benitaz, B-e-n-i-t-a-z?

2 Is that name familiar to you?

3 A Mr. Benitaz?

4 Q Is that name familiar?

5 A No, it is not.

6 Q Do you know if an individual applies to be
7 a caseworker, county caseworker, does he or she have
8 to choose for a particular county, like a county for
9 which he or she is applying?

10 A Yes.

11 Q And is an individual allowed to apply for
12 more than one county?

13 A Yes, they are.

14 Q Do you know how many, at a time?

15 A The limit is, I believe, ten. I'm not
16 positive about that, but I think it's ten.

17 Q There is some limit?

18 A There is a limit.

19 Q Did there come a time when you were
20 contacted by David Dows, the man who is here with me,
21 regarding employment in Erie County, Pennsylvania, and
22 it had to do with his attempting to be a county
23 caseworker with the Erie County Government?

24 A I can't recall receiving anything from
25 Mr. Dows on that particular subject.

1 Q What's your first contact, that you recall,
2 with Mr. Dows, or about Mr. Dows?

3 A The Commission had received a letter from
4 Mr. Dows, as I recall, requesting some age and gender
5 information from a civil service certification.

6 Q And was that request sent to you for
7 analysis, or response?

8 A It was sent to me by our Executive Office,
9 yes.

10 Q And what steps did you take, once you
11 received it?

12 A I contacted Mr. Dows by telephone.

13 Q And would you tell us about your telephone
14 conversation with him?

15 A Well, I wanted to explain to him that I
16 could not give him age and gender breakdown for each
17 candidate on the list, that I would not do that, but
18 we could give him counts, how many females were on the
19 list, how many males, and what the general age ranges
20 were.

21 Q And what did you mean by general age range;
22 by decades, or --

23 A Yeah, by decades.

24 How many people were on the list in their
25 20's, how many were in their 30's, how many were in

1 their 40's, et cetera.

2 Q And so forth?

3 A Yes.

4 Q And as you recall, did you provide that
5 data to Mr. Dows?

6 A Yes, we did.

7 Q And at some point did you learn that
8 Mr. Dows had been appointed as a per diem caseworker,
9 by the Office of Children and Youth?

10 A That same conversation, I found that out,
11 yes.

12 Q And the employer in that instance would
13 have been OCY in Erie County, Pennsylvania?

14 A That is correct.

15 Q Did you have any concerns that there had
16 been a per diem hire of Mr. Dows?

17 A Yes.

18 Q And what were those concerns?

19 A I -- I looked in our records for Mr. Dows'
20 employment history, I could not find that we had any
21 record of him working at the Erie County Children and
22 Youth.

23 Q Now, for the sake of the record, keep it
24 rounded out, when an individual is hired, who is in a
25 position covered by the civil service, you know,

1 people loosely call a civil service job, is the hiring
2 county supposed to notify your agency?

3 A The hiring county, yes, are supposed to
4 notify us.

5 Q And do they have a particular amount of
6 time in which they are supposed to do that?

7 A Within five days of the appointment, five
8 working days of the appointment.

9 Q And when you checked your records, there
10 was no record of Mr. Dows having been hired by the
11 county, for that purpose?

12 A That is correct.

13 Q Now, was there -- was there a per diem
14 category that was governed by this civil service, in
15 some way?

16 A We don't use the term "per diem".

17 Q Is there a term that you use, that means
18 essentially the same thing?

19 A I'm not really sure what Erie County meant
20 by per diem. To me, per diem means something totally
21 different than what they were -- what they seemed to
22 be using it as.

23 Q As you saw it, what did you take, in your
24 professional experience, the term "per diem" to mean?

25 A As far as Erie was concerned?

1 Q Your general understanding, before you
2 encountered this area?

3 A Per diem had to do with pay, with when you
4 are on the road, when you are traveling, pay that you
5 get for your expenses.

6 Q So really, expenses for being away from
7 your duty station?

8 A Away from your duty station.

9 Q And are there day by day jobs, in that
10 sense of per diem, that are covered by civil service;
11 does civil service really have anything to do with
12 hiring people just for brief periods of time?

13 A Yes.

14 Q And can that apply to any of the job
15 categories?

16 A Yes, it can.

17 Q When you learned about the per diem hiring
18 of Mr. Dows, the allegation that it had occurred, did
19 you make any investigation?

20 A Yes.

21 Q And what did you do?

22 A First thing I did, was contact Erie County
23 Children and Youth, to ask about the information that
24 I had received for Mr. Dows.

25 Q And what did you learn?

1 A Their human resource person advised me that
2 he had been hired as a per diem employee, without
3 benefit of the civil service certification.

4 Q And did you have any concerns about his
5 having been hired in that way?

6 A Yes, we did.

7 Q What were those professional concerns?

8 A That there was a possibility that his
9 selection was a violation of the civil service
10 regulation.

11 Q Did you ask the county to provide
12 additional data, or information to you, as part of
13 your investigation, at that point?

14 A I don't recall if I did at that point.

15 Q What was your next step in the
16 investigation?

17 A So much happened around the same time, a
18 lot of things.

19 Q Yes.

20 A A couple of things happened, not
21 necessarily in this order:

22 I had learned from talking to their human
23 resource office, about some other things that were
24 potential problems.

25 We -- I had my staff review some

1 documentation, previous certifications, that were
2 issued to Erie County Children and Youth, and I
3 discussed with my supervisor the possibility of doing
4 an onsite investigation.

5 Q Who was your supervisor at that time?

6 A Aubrey Watkins.

7 Q And what did you and Mr. Watkins decide
8 about an investigation?

9 A We decided that an investigation would be
10 appropriate in this case.

11 Q And so the Commission then began its own
12 investigation?

13 A That's correct.

14 Q And were you the prime investigator?

15 A Yes, sir.

16 Q What were the main points that you learned
17 in your investigation?

18 A We -- we -- we learned that Erie County
19 Children and Youth had been appointing employees in
20 the civil service jobs, without civil service
21 knowledge.

22 We learned that they had been promoting
23 people, within the organization, without civil service
24 knowledge.

25 There were actually about 20 different

1 issues that we had problems with, and I just don't
2 recall what they all were. But they were basically
3 focused around taking actions with appointments, and
4 movement of civil service employees, without advising
5 the Civil Service Commission of what they had done.

6 Q And were a number of these movements of
7 people in OCY?

8 A It was only OCY.

9 Q So that particular investigation was
10 confined to that agency?

11 A That is correct.

12 Q Was your contact person, in human
13 resources, Patrice Berchtold?

14 A Yes, it was.

15 Q And did Miss Berchtold offer an explanation
16 as to why the county had not been informing the
17 Commission of these personnel changes?

18 A There were explanations, yes. Yes, they
19 gave explanations.

20 I'm sorry, I had to think about what was
21 going on there.

22 Q And what were her explanations?

23 A For the, what she called per diem
24 employees, which were employees hired, brand new
25 appointments, without telling us, it was that they

1 wanted to give them a trial employment period, before
2 they determined whether they wanted to keep them on a
3 permanent basis, and hire them off the civil service
4 list.

5 For the promoted employees, they were
6 waiting to tell us until after the employee -- let me
7 backtrack a little bit.

8 According to them, under their collective
9 bargaining contract, a promoted employee had some
10 rights to return to their previous position, if they
11 didn't like it, for a certain period of time, I don't
12 recall what that period of time was, and they didn't
13 want to tell us the person was promoted, until they
14 were assured that they weren't going to exercise their
15 return rights to their previous position.

16 Q And that was an explanation given to you by
17 Patrice Berchtold?

18 A Yes, it was.

19 Q And was that explanation satisfactory to
20 you, as -- on behalf of the Commission?

21 A It was not.

22 Q And so, the having a possible right of
23 return to a different job is not an exception to the
24 reporting requirement that the Commission has to
25 report within five business days?

1 A Correct.

2 Q Is that right?

3 And, did you so inform Miss Berchtold?

4 A Yes, we did.

5 Q And did you say that the Commission
6 expected that hence forth, the county would follow the
7 five day rule?

8 A That, yes, we did.

9 Q Now, there is -- there resulted a
10 Commission action at appeal No. 23874, and we are
11 going to mark this as our next deposition exhibit.

12 (Thereupon, Deposition Exhibit No. 4 was
13 marked for identification.)

14 BY MR. TAGGERT:

15 Q And this document is entitled
16 "Adjudication," and it's 22 pages long, and so I am
17 going to ask you to take a minute with it, or actually
18 as many minutes as you need, until it is familiar to
19 you again.

20 But I believe it involves many of the
21 things that we were just talking about so, please,
22 take your time.

23 Sir, does looking at Exhibit 4, refresh
24 your memory of that?

25 A Yes.

1 Q The investigation?

2 A Yes.

3 Q The investigation that you were just
4 describing, is that what's discussed in part, in the
5 analysis in that adjudication, Exhibit 4?

6 A Yes.

7 Q Now, related, or occurring about the same
8 time, so perhaps related -- and keep Exhibit 4 handy,
9 but we are going to ask to you look at Exhibit 5,
10 which is an April 23 order.

11 (Thereupon, Deposition Exhibit No. 5 was
12 marked for identification.)

13 Q Sir, have you had a chance to take a look
14 at Exhibit 5?

15 A Yes.

16 Q Does it refresh your memory, that the
17 County of Erie filed a request to the Civil Service
18 Commission, to remove Mr. Dows from the caseworker
19 list?

20 A Yes.

21 Q Do you recall how you first learned that
22 the county had filed that petition?

23 A I think that the county told us that they
24 were going to file it.

25 Q Was that in a -- orally, or a phone

1 conversation?

2 A I think it was by phone.

3 Q And do you recall, were you the person
4 involved in that phone conversation?

5 A I think they may have first talked to
6 Miss Thau.

7 Q And at some point, did you discuss with
8 Patrice Berchtold, a request to remove Mr. Dows?

9 A I don't believe that I did.
10 I -- I'm not positive.

11 I may have discussed it with somebody at
12 the Children and Youth.

13 Q Does any other name come to mind in
14 addition to Patrice Berchtold, someone else it might
15 have been?

16 A The director at the time, was -- I think
17 her name was Leibel.

18 Q Debbie Leibel?

19 A Debbie Leibel.

20 Q And did Miss Leibel ask you what or how the
21 county might do, to remove someone from the list?

22 A I don't think so.

23 Q Same question, do you remember
24 Patrice Berchtold ever asking you what they could do
25 about somebody being on the list, if they didn't want

1 the person on the list?

2 A Okay. I must have misunderstood your first
3 question, I didn't think that's what you asked me
4 about Miss Leibel.

5 Q I apologize. Thank you. Because that way
6 we can correct the record, we will take them one at a
7 time.

8 A Okay.

9 Q As to Miss Leibel, if I understand right,
10 you think you might have had a telephone discussion
11 with her?

12 A We -- we may have discussed the general
13 process for requesting an eligible's name be removed
14 from the list.

15 Q Did it come up in the contact of the Dows
16 inquiry, that you were carrying on about his having
17 been appointed as a per diem, and such?

18 A No.

19 Q Okay.

20 And, you will notice that the order
21 references a date when the request was made to remove
22 Mr. Dows.

23 A Yes.

24 Q What date does that show?

25 A It says it was dated February 20th, 2004.

1 Q Would you, in your official capacity, have
2 any notes, or records -- not with you -- but at the
3 Commission, that would reflect phone conversations
4 with Miss Berchtold, or Debbie Leibel, about Mr. Dows?

5 A I would have no record, no.

6 Q In your day-to-day work, as you discuss
7 differing cases that are pending, and requests, do you
8 make notes of your conversations?

9 A Generally, not.

10 Q Do you make any sort of audio recording, or
11 something to refresh your memory later, about what was
12 discussed, or what happened?

13 A I do not.

14 Q Do you dictate correspondence, to try to
15 memorialize conversations?

16 A Generally not.

17 Q Do you recall giving any advice to
18 Ms. Berchtold, or Debbie Leibel, about how the county
19 could proceed if it wished to remove someone from --
20 to ask the Commission to remove someone from the civil
21 service list?

22 A I may have talked to them about, generally,
23 what the list removal procedure is.

24 Q Do you recall if you discussed what the
25 standards would be to remove someone, what would

1 constitute inappropriateness for a list?

2 A I would not discuss that with an agency.

3 Q Is there regulatory material, or written
4 material that the Commission publishes, or that's in
5 the PA Code, or the Bulletin, or wherever, that
6 explains what the procedure is to ask that someone be
7 removed?

8 A Yes, there is.

9 Q And where is that located?

10 A It's in a management directive, and I'm not
11 sure of what the management directive number is, but
12 it's a Civil Service Commission management directive.

13 Q Now, do you recall that after the County of
14 Erie requested that Mr. Dows be removed from the civil
15 service list, that he filed a written opposition to
16 that, explaining why he thought he should not be
17 removed?

18 A Yes.

19 Q Did that become part of the record in
20 Exhibit 4's docket No. 23874?

21 A I don't recall.

22 Q Now, there is Exhibit 5, uses an appeal
23 No. LR2004-010. Was there a separate docket created,
24 regarding Mr. Dows being removed from the list?

25 Is that -- would that indicate that there

1 was a file created at that docket number, regarding
2 the removal of Mr. Dows?

3 A I am kind of hesitating here, because you
4 are asking a separate document, or separate docket,
5 for Mr. Dows being removed from the list.

6 I wasn't aware his name was removed from
7 the list.

8 Q I want to apologize, I didn't mean to
9 indicate that.

10 You may recall, I believe our
11 understanding, yours and mine in your earlier
12 testimony, was that the county did request that he be
13 removed.

14 A Yes.

15 Q But that never actually happened, he never
16 was removed; agreed?

17 A Correct.

18 Q And would the filing of a request to remove
19 an individual from a civil service list, then trigger
20 the creation of a file, and an individual docket
21 number for that matter?

22 A I don't know for certain.

23 Q And so, the Exhibit 5 in front of you may
24 or may not represent a separate docket removing --
25 regarding the request to remove Mr. Dows? You are not

1 sure?

2 A That's correct, I am not sure.

3 Q But you do know the Commission declined to
4 remove him?

5 A Yes, sir.

6 Q Now, as indicated by the many investigative
7 matters discussed in Exhibit 4, the Commission looked
8 into a number of OCY activities; is that right?

9 A That is correct.

10 Q And is it correct to say, that that was
11 sua sponte; that the Commission, based on what you had
12 learned in your initial inquiries, had broad concerns,
13 and wanted to look into how the Commission was
14 handling civil service matters, and -- how the agency,
15 rather, was handling them?

16 A Yes.

17 Q At the same time, the request to remove
18 Mr. Dows occurred; is that roughly correct, or fit
19 your recollection?

20 A At the same time as what?

21 Q As you were carrying on your investigation,
22 the outcome of which is represented in Exhibit 4?

23 A Correct, yes.

24 It was around the same time, yes.

25 Q Now, in its relief in Exhibit 5, there was

1 an order that Mr. Dows' time on the list would be
2 extended, to make up for certain things, and then is
3 it your understanding that Mr. Dows was in fact hired
4 as a caseworker --

5 A Yes.

6 Q -- by the county?

7 A That's my understanding.

8 Q Did anyone subsequently, later, from OCY,
9 contact you to discuss Mr. Dows' work as a caseworker?

10 A No.

11 Q And just to flog the horse a little bit,
12 did anyone from OCY, after the order in Exhibit 5, ask
13 you to take any action against Mr. Dows?

14 A No.

15 Q When an individual -- are there certain
16 aspects of signing up to take a civil service test,
17 that are the same for all the tests; in other words,
18 is there one body of basic information everybody gives
19 when he or she signs up to take a test, you know,
20 name, address, date of birth, gender, that -- are
21 there certain items that are just always asked in the
22 civil service forms?

23 A There are certain items, not necessarily
24 the items that you just gave as examples, but there
25 are certain standard items on the civil service

1 application.

2 Q What are the absolute standard ones, the
3 ones that are just always there?

4 A Name, address, Social Security number, the
5 examination you are applying for.

6 Q Anything else come to mind?

7 A Education and experience.

8 I think that's -- that's all I can think
9 of, off the top of my head.

10 Q So, do the forms not consistently ask
11 people's date of birth?

12 A The date of birth is on a separate
13 attachment to the application, which the candidate can
14 or cannot fill out. It's the candidate's option
15 whether they complete that part of the application.

16 Q And do you have a name used for that other
17 document? How do you refer to that?

18 A It's called our research questionnaire.

19 Q Based on what you have heard, and seen
20 professionally, do the majority of people complete the
21 research questionnaire?

22 A I don't know.

23 Q But some people do?

24 A Some people do.

25 Q Some come back.